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STONEGA COKE & COAL CO. v. WILLIAMS.

Nov. 20, 1913.

[80 S. E. 100.]

1. Master and Servant (§ 235*)—Injury to Servant—Contributory Negligence.—That a motorman, who, on running a motor into a coal mine, was injured by projecting timbers on another motor standing without his knowledge, on the track just inside, was at the time giving his attention to keeping his pole in contact with the trolley wire, did not necessarily make him guilty of contributory negligence, in view of the condition of the wire making it necessary to hold the pole against it, and the fact that he had a right to rely on the premises being kept reasonably safe for him to do the work that the foreman had directed him to do.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 710-722; Dec. Dig. § 235.* 9 Va.-W. Va. Enc. Dig. 702; 14 Va.-W. Va. Enc. Dig. 694; 15 Va.-W. Va. Enc. Dig. 653.]

2. Master and Servant (§ 286*)—Place to Work—Warning of Danger—Duty of Foreman—Ignorance of Servant—Evidence.—Within the rule that a place of work, originally safe, having become unsafe in the absence of a servant, and he being ignorant of it and unable to discover it by the exercise of ordinary care, it is the duty of the foreman, in the absence of the master or a higher official, to warn the servant of it, evidence, in an action for injury to a motorman, taking his motor into a mine, from timbers on another motor standing on the track just inside the entrance, held sufficient to go to the jury on the question of the motorman's ignorance of the presence of the other motor.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1001, 1006, 1008, 1010-1015, 1017-1033, 1036-1042, 1044, 1046-1050; Dec. Dig. § 286.* 9 Va.-W. Va. Enc. Dig. 726; 14 Va.-W. Va. Enc. Dig. 699; 15 Va.-W. Va. Enc. Dig. 660.]

3. Master and Servant (§ 247*)—Injury to Servant—Contributory Negligence.—Any negligence of a servant injured when taking his motor into a mine, by timbers on another motor standing just inside, in not having his brake properly wound up, was not contributory negligence, where had it been so wound it would have been too late, when the danger was discovered, to avoid the collision.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 795-800; Dec. Dig. § 247.* 9 Va.-W. Va. Enc. Dig. 702; 14 Va.-W. Va. Enc. Dig. 694; 15 Va.-W. Va. Enc. Dig. 653.]

4. Master and Servant (§ 281*)—Injury to Servant—Contributory Negligence—Evidence.—Evidence, in an action for injury to a serv-

^{*}For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

ant, taking his motor into a mine, from collision with timbers on a motor standing a short distance inside, held to authorize a finding that he was not guilty of contributory negligence, either in going at excessive speed, or in going unnecessarily far.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 987-996; Dec. Dig. § 281.* 9 Va.-W. Va. Enc. Dig. 725; 15 Va.-W. Va. Enc. Dig. 659.]

5. Master and Servant (§ 217*)—Injury to Servant—Assumption of Risk.—A servant injured when taking his motor into a mine, by collision with projecting timbers on another motor standing unprotected in the unlighted entry, did not assume the risk; he being ignorant of the presence of the car, and it not being customary to leave cars standing there.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 574-600; Dec. Dig. § 217.* 9 Va.-W. Va. Enc. Dig. 693; 14 Va.-W. Va. Enc. Dig. 692; 15 Va.-W. Va. Enc. Dig. 650.]

6. Trial (§ 156*)—Demurrer to Evidence.—Where on the evidence the jury might reasonably find for plaintiff, it must, on demurrer thereto, be held sufficient.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 354-356; Dec. Dig. § 156.* 4 Va.-W. Va. Enc. Dig. 533; 14 Va.-W. Va. Enc. Dig. 331; 15 Va.-W. Va. Enc. Dig. 281.]

Error to Circuit Court, Wise County.

Action by Ivory Williams, by, etc., against the Stonega Coke & Coal Company. Judgment for plaintiff. Defendant brings error. Affirmed.

Bullitt & Chalkley, of Big Stone Gap, for plaintiff in error. Vicars & Peery, of Wise C. H., and C. R. McCorkle, of Appalachia, for defendant in error.

LIQUID CARBONIC CO. v. WHITEHEAD et al.

Nov. 20, 1913

[80 S. E. 104.]

1. Assignments for Benefit of Creditors (§ 184*)—Trustee as Bona Fide Purchaser.—A trustee in a deed of trust to secure creditors is a purchaser for value.

[Ed. Note.—For other cases, see Assignments for Benefit of Creditors, Cent. Dig. §§ 555-571; Dec. Dig. § 184.* 1 Va.-W. Va. Enc. Dig. 837.]

2. Assignments for Benefit of Creditors (§ 340*)—Remedy of Cred-

^{*}For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.